

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

SEP 17 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Regulatory Treatment of LEC)
Provision of Interexchange)
Services Originating in the)
LEC's Local Exchange Area)

CC Docket No. 96-149

and)

Policy and Rules Concerning)
the Interstate, Interexchange)
Marketplace)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

TO: The Commission

REPLY TO
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

The National Telephone Cooperative Association ("NTCA") and thirteen independent local exchange carriers ("the Small Telcos")¹ hereby reply to the oppositions of AT&T Corp. ("AT&T"), General Communication, Inc. ("GCI"), MCI Telecommunications Corporation ("MCI") and the Telecommunications Resellers Association ("TRA") to their August 4, 1997 "Petition For Reconsideration" of the Commission's Second Report And Order In CC Docket No. 96-149 And Third Report And Order In CC Docket No. 96-61, FCC 97-142, released April 18, 1997 ("Interexchange Order").

1 The thirteen independent local exchange carriers are Chequamegon Telephone Cooperative, Inc.; Chibardun Telephone Cooperative, Inc.; Citizens Telephone Cooperative, Inc.; Cochrane Cooperative Telephone Company; LaValle Telephone Cooperative, Inc.; Mabel Cooperative Telephone Company; Marquette-Adams Telephone Cooperative, Inc.; Nelson Telephone Cooperative; Richland-Grant Telephone Cooperative, Inc.; Spring Grove Cooperative Telephone Company; Tri-County Telephone Cooperative, Inc.; Vernon Telephone Cooperative, Inc.; and West Wisconsin Telcom Cooperative, Inc.

0411

Position of NTCA and the Small Telcos

NTCA and the Small Telcos have requested the Commission to permit cooperatives and other small independent local exchange carriers ("ILECs") to continue to furnish in-region, interexchange services through divisions as well as separate subsidiaries, and to reconsider and eliminate the new Section 64.1903(b) requirement that such services be provided only through separate legal entities. They have indicated: (a) that the toll resale offerings of small ILECs are the sole competitive alternative to AT&T in many rural areas; (b) that there is no record of anticompetitive abuses by small ILECs or their existing toll resale divisions; (c) that separate legal entities do not afford perceptibly greater protection against potential anticompetitive actions by small ILECs; and (d) that separate legal entity requirements will impair toll service and competition in many rural areas by imposing substantial and unnecessary costs upon small ILECs and their toll resale operations.

Rural Interexchange Service Competition

All four oppositions raise the specter of theoretical attempts by ILECs to limit toll competition, without considering the actual state of toll competition in Rural America. The critical fact is that there is little or no toll competition in many rural areas, and the primary reason for this is that MCI, GCI, TRA members and others have refused to extend their facilities to serve many rural exchanges. The Commission's records show that small ILECs in Iowa,

Minnesota, South Dakota and Kansas were forced to join together to construct and operate centralized equal access systems because potential toll competitors declined to serve their individual rural exchanges. In many other sparsely populated rural areas, "1+" presubscribed toll service remains available only from AT&T, or from AT&T and the resale affiliate of the local ILEC.

No History Of Anticompetitive Abuses

Since 1984, both small ILECs and Commission staff members have interpreted the "affiliate" requirement of the Competitive Carrier Fifth Report And Order² to encompass divisions as well as separate subsidiaries. As indicated in the August 4, 1997 "Petition For Reconsideration," a number of toll resale divisions of small ILECs have sought and received Section 214 authorizations, adopted and implemented interexchange service tariffs, and otherwise openly operated as divisions in full view of the Commission, AT&T, MCI, GCI, TRA and others.

During this time, NTCA and the Small Telcos are aware of no Section 208 complaints by AT&T, MCI, GCI, TRA or others that small ILECs have engaged in discrimination, cost misallocations, price squeezes or other anticompetitive behavior against interexchange carriers that enter their local markets to compete against their toll resale divisions (or subsidiaries). MCI's allegations against

2 Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Fifth Report And Order, 98 FCC 2d 1191 (1984) ("Competitive Carrier Fifth Report And Order").

the Bell Operating Companies ("BOCs") and Southern New England Telephone Company ("SNET"), even if true, have absolutely no relevance to the factors addressed, or relief sought, in the NTCA/Small Telcos petition. None of the other opponents have made any specific allegations of anticompetitive behavior against small ILECS with toll resale divisions.

Divisions Versus Separate Subsidiaries

Assuming, arguendo, that anticompetitive conduct is theoretically possible by small ILECs, none of the opponents has shown that a separate legal entity would be any more effective than a divisional structure in monitoring, isolating or deterring such conduct. The Small Telcos and other NTCA members are not massive organizations that engage in numerous transactions and maintain complex accounting systems. Rather, they are small companies whose transactions and accounting systems readily can be inspected and audited by the Commission and state commissions, whether their affiliated toll operations are organized in the form of divisions or separate subsidiaries.

As detailed in the August 4, 1997 petition, toll resale divisions of small ILECs can readily comply with the requirements of Section 64.1903(a) of the Rules. First, state commissions as well as this Commission require toll operations affiliated with ILECs (whether divisions or subsidiaries) to maintain separate books of account from those used by the ILECs for their regulated local exchange and exchange access operations. Second, the toll

resale divisions of the Small Telcos and most other small ILECs are pure resellers who do not own any interexchange facilities -- either by themselves or jointly with their small ILEC affiliates. Finally, toll resale divisions of small ILECs must purchase exchange access and other tariffed services from affiliated ILECs at the tariffed rates, terms and conditions applicable to such ILECs.

In the latter instance, the alleged prospect of a "price squeeze" by small ILECs against AT&T, MCI or others is absurd. First, the Small Telcos, as well as the majority of other NTCA members and small ILECs, do not maintain their own interstate access tariffs, but rather are included among the hundreds of issuing carriers in the National Exchange Carrier Association's ("NECA's") interstate access tariffs. Given that the NECA tariff rates are the result of the aggregation and averaging of the costs of thousands of exchanges operated by hundreds of small ILECs, no single small ILEC or group of small ILECs is able to influence the NECA tariff rates in the manner necessary to impose a price squeeze upon the local toll operations of AT&T, MCI or any other interexchange carrier. Second, the toll resale operations of small ILECs generally resell the facilities-based toll services of AT&T or MCI (in those rural areas where MCI has constructed or leased its own facilities). Hence, even in those few instances where a small ILEC may have its own interstate access tariff, its "ability" to impose a "price freeze" upon AT&T or MCI would be limited by the ability of AT&T or MCI to set the wholesale prices and terms

of sale for the underlying, facilities-based toll services. Put simply, there has yet to be a reported instance of a small ILEC savaging AT&T or MCI, or running one or both out of any interexchange market, and the Commission is unlikely to be confronted with such a situation during the lifetime of anyone reading this reply.

Cost of Separate Legal Entity

None of the opponents addressed the additional legal, accounting and administrative costs imposed upon small ILECs and their affiliated toll resale operations by the separate legal entity requirement, or the additional tax costs and limitations imposed upon some telephone cooperatives. Given the absence of any record of anticompetitive conduct by toll resale divisions as well as the lack of significant additional protection from separate subsidiaries, these additional costs are wholly unnecessary. Rather than creating any benefit for the public, these costs reduce the resources available to ILEC toll resale operations for the improvement of the service and pricing options they can offer to their rural customers. Given that ILEC toll resale operations constitute the only competitive alternative to AT&T in many rural areas, this reduction of service and pricing options will have a significant and adverse impact upon competition and the public interest in such areas.

Conclusion

NTCA and the Small Telcos have shown that the toll resale offerings of small ILECs constitute the only competitive alternative to AT&T in many rural areas; that the existing toll resale divisions of small ILECs have not engaged in anticompetitive behavior; that separate legal entities would not provide any greater protection than divisions against potential anticompetitive behavior; and that separate legal entities entail substantial and unnecessary costs that would actually impair toll service and competition in many rural areas. AT&T, MCI, GCI and TRA have produced no specific evidence of abuses to negate this showing. Rather, they have asked the Commission to impose unnecessary, costly and ineffective separate subsidiary requirements upon the toll resale operations of small ILECs, many of which serve rural areas that MCI, GCI and TRA members have never heretofore demonstrated any interest in serving. In order to preserve what limited toll competition exists in many rural areas, NTCA and the Small Telcos ask the Commission to reconsider and rescind the separate entity requirement adopted in its Interexchange Order, and

to permit small ILECs to continue furnishing in-region, interexchange services through divisions that are not separate legal entities.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

By David Cosson (G24)
David Cosson
Vice President - Legal & Industry

2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 298-2300

**CHEQUAMEGON TELEPHONE COOPERATIVE, INC.
CHIBARDUN TELEPHONE COOPERATIVE, INC.
CITIZENS TELEPHONE COOPERATIVE, INC.
COCHRANE COOPERATIVE TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE, INC.
MABEL COOPERATIVE TELEPHONE COMPANY
MARQUETTE-ADAMS TELEPHONE COOPERATIVE, INC.
NELSON TELEPHONE COOPERATIVE
RICHLAND-GRANT TELEPHONE COOPERATIVE, INC.
SPRING GROVE COOPERATIVE TELEPHONE COMPANY
TRI-COUNTY TELEPHONE COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE, INC.
WEST WISCONSIN TELCOM COOPERATIVE, INC.**

By Gerard J. Duffy
Gerard J. Duffy

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
(202) 659-0830

Dated: September 17, 1997

CERTIFICATE OF SERVICE

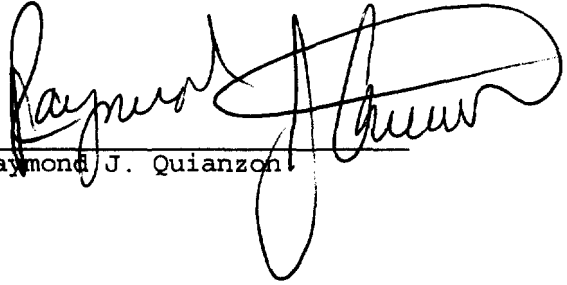
I hereby certify that I am an employee with the law firm of Blooston, Mordkofsky, Jackson & Dickens, and that on this 17th day of September, 1997, I caused to be mailed via first class United States mail, postage prepaid, a copy of the foregoing "**Reply to Oppositions to Petitions for Reconsideration**" to the following:

Mark C. Rosenblum
James H. Bolin, Jr.
AT&T Corp.
Room 3247H3
295 North Maple Avenue
Basking Ridge, New Jersey 07920

Kathy L. Shobert
General Communication, Inc.
Suite 900
901 - 15th Street, N.W.
Washington, D.C. 20005

Frank W. Krogh
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
Suite 701
1620 Eye Street, N.W.
Washington, D.C. 20006



Raymond J. Quianzon